

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT C. JONES,

Petitioner,

v.

OFFICE OF THE WARDEN
(NNCC), *et al.*,

Respondents.

Case No. 3:22-cv-00193-MMD-CLB

ORDER

Pro se Petitioner, Robert C. Jones, has submitted a pleading to the Court seeking relief with respect to his confinement at the Northern Nevada Correctional Center ("NNCC"). (ECF No. 1.) Jones' avenue for relief in this Court would be a petition for writ of habeas corpus under 28 U.S.C. § 2254. A petition for writ of habeas corpus filed by a person who is not represented by an attorney must be on the form provided by this Court. See LSR 3-1, Local Rules of Practice, U.S. District Court of Nevada. Jones' pleading, however, is not on the Court's approved form.

In addition, the Court notes that Jones brought a previous habeas action in this Court challenging his conviction and sentence. See *Jones v. Palmer*, 3:11-cv-00467-MMD-WGC. In that proceeding, the Ninth Circuit Court of Appeals affirmed this Court's denial of Jones' habeas petition. *Id.* (ECF No. 77). The United States Supreme Court subsequently denied Jones' petition for writ of certiorari. *Id.* (ECF No. 92).

If a petitioner has previously filed an application for habeas relief under section 2254 which has been denied on the merits, the court cannot grant relief with respect to a claim that was presented in the prior application. 28 U.S.C. § 2244(b)(1). In addition, the court cannot grant relief with respect to a claim that was not presented in the prior application unless:

1 (A) the applicant shows that the claim relies on a new rule of
2 constitutional law, made retroactive to cases on collateral review by the
Supreme Court, that was previously unavailable; or

3 (B)(i) the factual predicate for the claim could not have been
4 discovered previously through the exercise of due diligence; and

5 (ii) the facts underlying the claim, if proven and viewed in light of the
6 evidence as a whole, would be sufficient to establish by clear and
convincing evidence that, but for constitutional error, no reasonable
factfinder would have found the applicant guilty of the underlying offense.

7 28 U.S.C. § 2244(b)(2). Moreover, § 2244(b)(3) requires a petitioner to obtain leave from
8 the appropriate court of appeals before filing a second or successive petition in the district
9 court. Thus, Jones is advised that a habeas petition filed in this Court without an order
10 from the court of appeals authorizing such an action may be subject to dismissal for lack
11 of jurisdiction. See *Burton v. Stewart*, 549 U.S. 147, 153 (2007).

12 Finally, this matter has not been properly commenced because Jones has neither
13 paid the \$5.00 filing fee for a habeas proceeding nor filed a completed application to
14 proceed *in forma pauperis* on the Court's approved form. See Local Rule LSR 1-1. Under
15 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, a petitioner must attach both an inmate
16 account statement for the past six months and a properly executed financial certificate to
17 his application.

18 It is therefore ordered that this action is dismissed without prejudice.

19 The Clerk shall enter judgment accordingly and close this case.

20 It is further ordered that a certificate of appealability is denied, as jurists of reason
21 would not find the Court's dismissal of this improperly commenced action without
22 prejudice to be debatable or incorrect.

23 DATED THIS 6th Day of May 2022.

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26 MIRANDA M. DU
27 CHIEF UNITED STATES DISTRICT JUDGE
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